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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7

8 ANDY NICHOLAW,

No. C-11-4272 JCS

9 Plaintiff,

10 **ORDER RE PLAINTIFF'S OBJECTION TO**
11 **DISMISSAL ORDER**

v.

12 BOARD OF SUPERVISORS,

[Docket Nos. 11, 12]

13 Defendants.
14

15 Plaintiff Andy Nicholaw has filed an "Objection to Order Dismissing Complaint" on the
16 ground that the Defendants have not consented to the jurisdiction of the magistrate judge and thus
17 this Court lacked jurisdiction to dismiss the action. Docket No. 11. The Court declines to consider
18 Plaintiff's objection as this matter has been dismissed. Plaintiff's "Motion for Default Judgment to
19 Compel Performance" (Docket No. 12) is also moot as this case has been dismissed.

20 The Court does not require the consent of the defendants in order to properly dismiss the
21 action as frivolous because defendants have not been served, and, as a result, are not parties to the
22 action. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir.1995) (holding that magistrate judge had
23 jurisdiction to dismiss prison inmate's action under 42 U.S.C. § 1983 as frivolous without consent of
24 defendants because defendants had not been served yet and therefore were not parties); *see also*,
25 *Merino v. Saxon Mortg. Inc.*, 2011 WL 794988, *1 (N.D. Cal. Mar 1, 2011) ("Defendants that have
26 not been served are not parties under the meaning of 28 U.S.C. § 636(c), and therefore, their consent
27 is not necessary for the Court to rule on this dispositive motion.").

1 In the present case, Plaintiff consented to magistrate jurisdiction. Because the defendants
2 have not been served, they are not parties and the Court had jurisdiction to enter the dismissal order.

3 Dated: December 20, 2011

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5 JOSEPH C. SPERO
6 United States Magistrate Judge
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